

AMENDED SUMMARIZED MEETING MINUTES

**CITIZEN CODE OF ETHICS TASK FORCE
REGULAR MEETING
PINNACLE CONFERENCE ROOM
7575 EAST MAIN STREET
SCOTTSDALE, ARIZONA
DECEMBER 6, 2005**

PRESENT: Art DeCabooter, Chairman
Jim Derouin
Margaret Dunn
Jim Bruner
Rita Saunders-Hawranek
Dewey Schade
Ned O'Hearn

STAFF PRESENT: Joe Kisler
Jay Osborn
Neal Shearer
Teri Traaen
Lisa Byler

ALSO PRESENT FOR ALL OR PART OF MEETING:
Mike Kelly
Lyle Wurtz

CALL TO ORDER

The regular meeting of the Citizen Code of Ethics Task Force was called to order by Chairman DeCabooter at 5:04 p.m.

ROLL CALL

Chairman DeCabooter noted that all members of the Task Force were present as stated above.

OPEN CALL TO THE PUBLIC

Mr. Mike Kelly, a Scottsdale citizen, addressed the Task Force. Stating that it is very important to establish a relationship of trust, so that citizens feel that City government has credibility, Mr. Kelly noted two areas of concern.

Enforcement is a key consideration. How can a City Attorney, hired by City Council, investigate alleged ethical violations by Councilmen? It might be necessary to ask an outside body to investigate to ensure that the public perception is that the process is fair.

His other concern was "revolving door" conflicts, when an elected official leaves office and becomes a lobbyist or consultant and takes advantage of relationships forged during his term of office. Mr. Kelly acknowledged that this problem is often seen in Washington and he wondered how other cities have addressed this problem.

Ms. Dunn noted that Mr. Kelly served with her on the Transportation Commission.

APPROVAL OF MINUTES OF NOVEMBER 28, 2005 MEETING

MS. DUNN MOVED THE ACCEPTANCE OF THE MINUTES OF THE NOVEMBER 28, 2005 MEETING. THE MOTION WAS SECONDED BY MR. BRUNER.

Dr. Traaen asked to have Mr. Delaney's name added to the list of attendees.

THE MOTION CARRIED BY A UNANIMOUS VOTE OF 7 (SEVEN) TO 0 (ZERO).

1. DISCUSSION ON PROPOSED COMPONENTS OF ETHICS POLICY/PROGRAM

Chairman DeCabooter reported that he and Dr. Traaen had met with Mr. Delaney, who is very interested in assisting the Task Force, although he was unable to come tonight.

Dr. Traaen said staff members are working with the procurement department on a personal services contract for Mr. Delaney. Chairman DeCabooter said they explained to him that if he were to come to this meeting, he would be seated with the public. It remains up to the Task Force to determine how they wish him to assist in its work.

Mr. Jay Osborn reviewed Appendix 1 of the binder, which consists of existing resource materials. He noted that plenty of material relates to matters on the matrix that staff has drawn up. The conflict of interest statutes include such matters as contracts, sales, purchases, disclosure of confidential information, and nepotism.

Many matters related to the City are procedural and are covered in the City Code and by State statutes. Mr. Osborn distributed the section of the City Code that deals with grounds for discipline and dismissal for City employees. This refers to classified or hourly employees. He pointed out that employees are expected to follow many administrative regulations and that failure to do so can lead to progressive discipline, up to and including termination.

There is a Code provision dealing with gifts and gratuities, which applies to elected and appointed officials, as well as City employees. The provision for no additional income for services falls under the conflict of interest rules.

Both the City charter and State statute require an oath of office. He had reviewed the Open Meeting Law at the last meeting. There is no prohibition on elected or appointed officials holding outside employment. There are Code provisions that regulate the outside employment and political activities of employees.

Mr. Osborn noted that some items on the ethics matrix are not covered in Appendix 1. There is a very detailed requirement for Councilmen to make disclosures annually in Section 2-76 of the City Code.

Mr. Bruner asked whether candidates for City Council have to make disclosure. Mr. Osborn replied that they do.

The next item on the ethics matrix not in Appendix 1 is incompatibility of offices with outside employment. A State statute covers incompatibility of offices. City employees are governed by a City Code provision relating to outside employment. This requires them to get permission from their General Manager to hold outside employment. This is usually reviewed by HR and cannot interfere with their job or constitute a conflict of interest.

He commented that both civil and criminal penalties apply to many of the statutes he mentioned. Although nothing applies to elected officials or board members, City employees face penalties for unauthorized copying of software. The criminal code covers many of the violations that could occur related to the use of City equipment for private gain.

Mr. Osborn distributed copies of: *You As A Public Official*, a pamphlet published by the Arizona League Of Cities And Towns. This covers many of the topics on the ethics matrix and he noted it is written in a user-friendly narrative style.

Mr. Derouin asked staff to provide copies of Section 2-76 of the Scottsdale City Code, which governs financial disclosure. Dr. Traaen undertook getting that to the Task Force members.

Mr. Schade asked which elements apply to City employees. Mr. Osborn said that the rules about nepotism and solicitation of gifts apply. He noted that a common discipline issue with employees relates to violation of the rules against workplace discrimination and harassment. There are federal regulations against discrimination and City rules about workplace behavior.

Mr. Schade asked how employees know about all the rules. Dr. Traaen outlined the training and materials offered at orientation and the Human Resources Department's ongoing training programs. New employees are required to sign a statement acknowledging that they have received the orientation materials and instruction.

Referring to Code provision 14-72, Mr. Osborn commented that the grounds for discipline are mostly common sense, basic rules forbidding theft, destruction of City property, and so forth.

Answering follow-up questions from Mr. Schade, Dr. Traaen expanded on the orientation for new employees. She said that although there is not one component or unit entitled "Ethics Instruction," at every session throughout the day, the City's values and climate are described. Mr. Schade said that giving examples is a good way to get people thinking about ethics. Instruction from the Diversity and Dialogue Division of Human Resources is included in the orientation. There is a positive expectation of behavior.

Mr. Osborn added that the City has a policy of progressive discipline, so that an employee who is on the edge of a violation should be warned about their behavior by their supervisor before being disciplined.

Dr. Traaen described training opportunities for a variety of levels offered by Human Resources. In January, additional levels of more complex training, including a coaching institute, will be offered. A new software program to track and follow up and assist with career mapping will also be implemented in the near future. In answer to a question from Ms. Dunn, Dr. Traaen said that a new ethics code could be incorporated into the training.

Mr. Derouin noted that the State statute does not prohibit using public office to influence a decision. He feels that this should be clearly explained in the ethics code. He said that the *You As A Public Official* document explains State law better than documents currently in use in the City. Legal language is hard for lay people to understand. Without training and amplification, unintentional violations will likely result.

Mr. Schade commented that this illustrates the importance of giving examples. He agrees with taking a positive approach in employee orientation. However, he noted that situations of concern are negative in themselves. He gave the example of a staff member whose supervisor tells her to help a friend of his with

a permit application. The staff member may not perceive this is as an ethical dilemma and believes she is doing a fine job of being helpful and giving good service to the public. Illustrations like this can help people understand.

Dr. Traaen said that employees are told they can come to the Diversity and Dialogue Office in Human Resources with any concerns at any time. This service is used on a regular basis as people come in to bounce ideas off a disinterested, neutral party.

Mr. Osborn agreed with Mr. Derouin that the Arizona League of Cities and Towns materials provide more details than Scottsdale's materials. When he and Ms. Bronski give orientations to new board and commission members, they make a point to say it is a requirement to report a conflict of interest. They advise that once an official has declared a conflict at a meeting, he should leave the room during the discussion. This makes it clear that he did not participate in any discussion or voting.

Mr. Derouin noted that some people think if they do not vote, it is all right for them to lobby. This is a common problem in Arizona, apparently. This is crucial to the integrity of the process. Other than voting, State law does not define what "participation" means, leaving it up to the entity to define.

Mr. O'Hearn asked Dr. Traaen whether more training would be redundant. She replied that Human Resources could enhance what is in place with more case studies and role-playing.

Dr. Traaen said that Human Resources partners with the City Attorney's office on the training of boards and commissions. Mr. Derouin stated that there tends to be an over-emphasis in training on the Open Meeting Law, while other issues are never touched.

Mr. Schade agreed with Mr. Delaney's position that training is fundamental. He would like an independent evaluation to see whether the current training on ethics is adequate.

At the request of Chairman DeCabooter, Dr. Traaen facilitated a discussion of the topics on the ethics matrix, with the assistance of Mr. Joe Kisler, who was the primary researcher for the resource notebook and had drawn up the ethics matrix.

Dr. Traaen suggested starting discussion on the items where the greatest consensus was noted. Chairman DeCabooter cautioned that prioritizing too soon could be a mistake.

Mr. Derouin said that having an Opening Statement is essential. Mr. Bruner suggested making reference to the law in the Opening Statement. Ms.

Saunders-Hawranek suggested that the aspiration statement she drafted could be the opening statement. Mr. Schade suggested that an executive summary should be included in the introduction.

During discussion, Task Force members concurred that the following areas are important components of a code of ethics: conflict of interest; outside employment; incompatibility of employment; disclosure of conflicts upon review; avoiding the appearance of conflicts of interest; policy regarding gifts, gratuities, and extra compensation; and the Open Meeting Law.

Mr. O'Hearn pointed out that regulations regarding outside employment cannot apply in the same manner to staff and appointed/elected officials, whose City functions take up only part of their time. Mr. Schade commented that a city employee may need a second job, or their spouse might take a job that requires disclosure.

A discussion ensued on how the public perceives conflicts of interest. Expertise resulting from employment in an industry may make an official better able to serve the City, yet the public may automatically see employment in a particular industry as a conflict of interest.

Mr. Derouin said that someone needs to review full disclosure and decide on individual cases where there is potentially a conflict of interest.

Ms. Saunders-Hawranek raised the issue of public access to records and minutes of meetings. Although this is a legal right, she commented that she has encountered runarounds when trying to obtain information that is public record.

Mr. Schade stated that these problems are a result of the mind-set of counter staff members who need training.

Mr. Bruner said that responsibility of public officials is a basic tenet. Mr. Schade commented that members of the public were present and could take notes. Ms. Saunders-Hawranek responded that openness goes beyond the actual occasion of the meeting. Documents are generally ready a week before a public meeting, yet she has discovered that City staff will not always provide them upon request.

Mr. Osborn said these are public records and that once the agenda is published the information in packets should be available. Mr. Shearer commented that every document is scanned and posted to the website. In the ensuing discussion between Ms. Saunders-Hawranek, Mr. Shearer and Mr. Schade, Ms. Saunders-Hawranek said she wants compliance with the law. The public is entitled to have access to these documents without having to give a reason for their request. Not everyone has a computer. Mr. Shearer said this is a question of staff training rather than ethics.

Mr. O'Hearn commented that information can be shared unfairly so that one outside party is favored over another, even if it is not confidential. Abuse of information is also unethical. Dr. Traaen paraphrased this as "appropriate action of disclosure."

A discussion ensued on who the Code of Ethics should apply to and how to state this in the document. Mr. Bruner noted that some elements apply more to elected officials and boards than staff. Ms. Saunders-Hawranek felt that the document should state at the outset that it applies to all groups. Mr. Bruner noted that the charge to the Task Force from City Council was to draw up a Code of Ethics for members of City Council, Boards and Commissions. Mr. Derouin suggested starting their thinking with City Council, Boards and Commissions. At a later stage, the Task Force can consider which of these elements should also apply to City staff.

Mr. Schade said he does not consider the letter from City Council as a charge or limitation per se. He is prepared to seek input from Council members as to whether the charge was an intentional limitation.

Chairman DeCabooter suggested following Mr. Derouin's suggestion, to work assuming that the Code of Ethics applies to City Council, Boards and Commissions and then recommend to City Council that relevant sections also apply to staff.

Mr. Schade acknowledged that certain elements apply only to City Council, Boards and Commissions, while others apply only to staff. However if the goal is to create a culture of ethics for the City, staff should not be left out.

Dr. Traaen noted the Task Force was debating who the target audience is. She remarked that perhaps a sub report or a minority report could be added with the components applicable to staff.

Dr. Traaen suggested that when Mr. Delaney returns to the Task Force, he can help them make a final decision. In the meantime, it is better to keep as much flexibility as possible. Mr. Derouin noted that at this point, the Task Force is deferring the issue of applicability to employees until they have figured out what should apply to City Council, Boards and Commissions. It is extremely difficult to define complex issues like conflict of interest such that everything applies to all groups.

Mr. O'Hearn noted that e-mail issues are not confined to Open Meeting Law violations. Today it is the most common means of communicating and applies to all sectors. Issues include retention and disclosure internally and externally, and whether regulations apply to City-owned computing equipment only or also to personal computers.

Mr. Bruner remarked there should be something in the Code of Ethics about public responsibility, stewardship of the environment, and sexual harassment.

Noting that much of this is a matter of law and that violations of the law are per se unethical, Mr. Schade stated that it is important to focus on the gray areas such as conflict of interest where the law does not lay out behavior.

Ms. Dunn noted that she has a contract with the City. Does this disqualify her from serving on a board or commission? Mr. Derouin said he felt that City Council members would be in a conflict of interest if they had a contract with the City. Mr. O'Hearn stated that Ms. Dunn could serve on the Transportation Commission and not participate in any decisions or votes relating to trolleys. Her expertise would benefit the Commission. Ms. Saunders-Hawranek added that for some bodies, expertise is a requirement for appointment.

A discussion on enforcement and compliance ensued. Mr. Derouin suggested Human Resources would enforce compliance for staff. Perhaps the City Manager or City Attorney could ensure enforcement and compliance for members of boards and commissions.

Mr. Shearer advised the Task Force that currently members of boards and commissions are Council appointees, so the City Manager or her staff is not involved in enforcement. Mr. Derouin said that a process needs to be drawn up and published. For members of boards and commissions, he would suggest the City Attorney, who would investigate and make a recommendation to City Council. If a complaint is lodged against a City Council member, his suggestion was to make an initial complaint to the City Attorney. If the City Attorney's investigation determines that there is a legal issue, they would send the matter to the County Attorney. It is important to create a clear process.

Mr. Schade suggested appointing an ethics compliance officer, with training and knowledge, who would answer to City Council directly and not be subject to pressure from City management. Mr. Bruner hoped that a full-time position would not be needed, given that Human Resources takes care of employees. Mr. Schade pointed out that the ethics compliance officer would also work on training.

Chairman DeCabooter suggested having an expert on retainer. Ms. Saunders-Hawranek said that the City Attorney could refer to outside expertise as needed. Other entities have dealt with this issue in the past. Mr. Schade said that a mechanism is needed so that no one is put in the position of investigating his or her boss.

Mr. Derouin noted that the Milpitas, California code charges the City Attorney to be proactive. He is firmly in favor of this. Lay people are not used to the law and need a lawyer to constantly remind them. This ordinance should be interpreted

such that the City Attorney, in addition to regular duties, should be outspoken in giving advice on the validity of legal compliance in all matters and in interpreting, applying, enforcing, and achieving compliance. Mr. Derouin recommended putting the expectation of being proactive into the job description for City Attorney's Office staff.

Chairman DeCabooter said it is unethical for City Council members to inappropriately endorse or advocate proposed actions ahead of time before a decision is taken in an open forum.

A discussion on ethics audits took place. It was noted that Mr. Delaney had urged this practice and the consensus of the Task Force was that they would have him expand on this idea when he returns.

The topic of political activity refers to staff and is covered by the City Code as well as statutes. Mr. Shearer commented that information was recently sent out to staff as a reminder on this area.

Ms. Saunders-Hawranek wondered whether a statement condemning smears and negativity in campaigning could be included in the aspirations statement. Mr. Bruner noted that Milpitas, California has a good statement. Although it is desirable to encourage civil behavior, it was noted that enforcement is a different matter.

Ms. Saunders-Hawranek noted that fiscal responsibility and good stewardship should be mentioned in the Code.

In preparation for the next meeting, Chairman DeCabooter asked staff to make a bullet point list from the flip charts. This will be distributed prior to the meeting along with the minutes. Staff undertook to forward these materials to Mr. Delaney at the same time. Chairman DeCabooter asked Task Force members to consider what role Mr. Delaney should have as consultant.

For the next meeting, Chairman DeCabooter said the Task Force will fine tune the draft outline as it now stands. Mr. O'Hearn suggested starting with questions, for example on conflict of interest. Mr. Derouin remarked he had found Mr. O'Hearn's questions thought provoking. Coming up with questions under the various topics might advance discussion for next time.

Chairman DeCabooter noted that the next Task Force meeting is on December 19 at 5:00 p.m. The January meetings will be set at that time. Ms. Saunders-Hawranek suggested having longer meetings in January, perhaps on Saturdays, in order to forge ahead.

Mr. Derouin noted that Mr. Kelly's comments about the revolving door issue should be added for future discussion. Enforcement of an individual who has left

office might not be possible, but it would be good to see what other jurisdictions do.

OPEN CALL TO PUBLIC

Mr. Lyle Wurtz addressed the meeting saying he has been attending Council meetings for a decade and considers himself a gadfly.

He said that the Task Force has a tough job. Today, more and more agencies need to fight vested interests and conflicts of interest. He observes that citizens are becoming increasingly disenchanted, feeling that their views count for nothing, that decisions are made before public testimony is opened. They perceive City Council as a rubber stamp organization. This breeds apathy. He feels strongly that some staff members support developers. He charged that staff reports are sometimes biased and only mention the pros of an application, not a balanced presentation of pros and cons, which is needed. It is his perception that citizens are more and more disinclined to apply for boards.

Mr. Kelly thanked the Task Force for its work. He commented that there is supposed to be a division between policy and management. City Council set the policies, like a board of directors in a company. The City Manager is like the CEO for the City.

Mr. Kelly stated that people who run for office are often unaware of what they are getting into. The duties of council members to their constituents should be clearly spelled out. Council members may do the wrong thing inadvertently, while meaning to be helpful. Governing a modern city the size of Scottsdale is a complex matter.

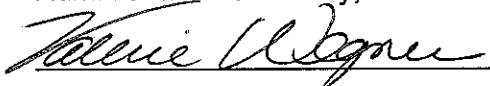
He commented that disclosure of a conflict of interest is important, especially in cases where an official's professional expertise relates to the City office they hold. He concluded by commenting that these ethical questions are not easy.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Citizen Code of Ethics Task Force adjourned at 7:37 p.m.

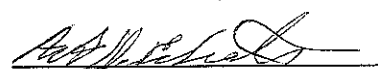
Respectfully submitted by:

Valerie Wegner
Administrative Secretary, Human Resources



Reviewed by:

Art DeCabooter, Chair



Officially approved by the Citizen Code of Ethics Task Force on December 19, 2005.